ARTICLES

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Investment Codes as Instruments of Economic Policy: A Cameroon Case Study

Investment codes can be viewed as road maps for companies and individuals interested in investing in host countries. As would be expected of any road map, the code helps the prospective investor navigate through a complex of rules and regulations governing what is frequently referred to as "doing business" in that particular country. In this role, the code provides useful information on eligibility requirements for doing business in the country selected, the acceptable juridical form through which private capital can be channeled and towards what sectors of the host economy.

For enterprises already admitted into the host economy, the code also serves another role by operating as a framework agreement between the investor, foreign or domestic, and the host government. In this role it sets forth the respective parties' rights and obligations and the sanctions and penalties that will result in the event of a breach. The investor who complies fully with its obligations under the code stands to reap a variety of benefits such as generous tax holidays, partial or complete exemptions from customs duties, and fewer restrictions with respect to currency transfers back to the investor's home country. Additionally, as long as the host government sticks to its end of the bargain, its economy is assured of a steady infusion of private capital and technology.

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Investment codes also serve a third purpose. They can be viewed as extensions or even surrogates of the host country's economic development plans. The use of the investment code as an instrument of economic policy, while not new in capital-starved African countries, has taken on an urgency as a result of the dire economic straits in which these countries now find themselves. With the drying up of official development assistance and the increasingly limited possibilities of raising capital through commercial bank loans, debt-burdened African countries have refocused their attention on private sector initiative as the key to industrial and commercial development. This emphasis on investment-led economic growth has in effect transformed the investment code from a framework agreement to a vehicle for achieving the host country's socioeconomic objectives as outlined in the Five-Year Development Plan. Thus, from its originally limited role as a catalyst for private capital and technology transfers, the investor is now elevated to full partnership status with the host government, working hand-in-hand to accomplish the socioeconomic goals in the development plan.

These three roles the investment code can play are not mutually exclusive. Conceptually and practically these roles overlap, though they tend to emphasize different aspects of the investment picture and raise different expectations for both investor and host government. This article explores and assesses the role of investment codes as instruments of economic policy through a case study of one of Africa's model economies until it fell on hard times.

Cameroon, long regarded as one of the few attractive investment oases in sub-Sahara Africa,[1] recently undertook a major overhaul of its economic policy.[2] Confronted by the legacy of years of profligate spending and gross mismanagement resulting in: negative growth since 1986; a $4.5 billion external debt burden that is approximately 43 percent of the Gross Domestic Product (GDP); a debt-service ratio of 23 percent of export earnings further complicated by deteriorating terms of trade; a chronic budget deficit that is 4.2 percent of GDP; a steady decline in per capita incomes; a banking system that is all but in shambles; and a national unemployment rate estimated at 15 to 20 percent, finally convinced policymakers in Yaounde of the need to define a new policy under a World Bank/IMF-imposed structural adjustment and economic revival program.[3] The

1. *See, e.g.*, Sams, *The Legal Aspects of Doing Business in Cameroon*, 17 INT'L LAW. 489 (1983); Kofele-Kale, *Host-Nation Regulations and Incentives for Private Foreign Investment: A Comparative Analysis and Commentary*, 15 N. C. J. INT'L L. & COM. REG. 361 (1990).

2. *See* Biya, *A New Era Dawns on Cameroon*, Cameroon Tribune, Jan. 2, 1991, at 4–5, col. 1 (President Biya's 1991 New Year's Message to the Nation).

3. In 1987–88 Cameroon initiated a stand-by arrangement with the International Monetary Fund (IMF) and a complementary Structural Adjustment Program (SAP) with the World Bank. SAP has set medium-term goals to: reestablish economic growth; eliminate impediments to business activity; minimize direct government involvement in the production and distribution network; and redirect-public services toward programs improving social well-being and general economic productivity. The program is financed by an eighteen-month stand-by arrangement of SDR 69.525 million (approximately $90 million) and a $150 million adjustment loan from the World Bank, to be disbursed in three

government has focused its restructuring efforts on creating a more open and efficient economy through a variety of reforms such as trade liberalization, reduction in the government's role in the economy, and liberalized treatment of private direct foreign investment (FDI).[4]

The groundwork for a more liberal legal framework for FDI was laid with the creation of an Industrial Free Zone (IFZ or free trade zone), which was enacted into law in January 1990,[5] and was followed by the promulgation of a new investment code in November 1990.[6] The 1990 Code (or Code) replaced Law No. 84/3 of July 4, 1984 (1984 Code) and is intended to plug some of the gaping holes in the 1984 Code and to play a catalytic role in the government's strategy to contain the economic crisis by attracting badly needed domestic and foreign direct investment to the country.[7] The Code's overarching objective is the encouragement and promotion of productive investments in the country through liberalization of the economy. It promises to take the necessary steps to:

> [E]ncourag[e] the creation and development of economic activities that are geared towards the
> —valorization of Cameroon's natural resources, as a priority,
> —creation of new jobs,
> —production of competitive goods and services for local consumption and for export,
> —increase in the exports of manufactured products,
> —transfer and adoption of appropriate technologies,
> —protection of the environment and,
> —improvement of the quality of life in urban and rural areas.[8]

The Code draftsmen saw it as an instrument of economic policy and, therefore, sought to link the Code's incentives to achievement of the government's priority economic objectives of export promotion, employment generation, domestic

installments. In addition, the African Development Bank extended a loan of $125 million while sovereign creditors either forgave concessional loans (the United States forgave $73 million in development loans to Cameroon in January 1990) or agreed to a rescheduling of the debt (the Paris Club and China agreed in March 1990 to reschedule bilateral debts totalling $73 million which will now mature in 1993). *See* U.S. COMMERCE DEP'T, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES: CAMEROON 1, 5 (1990) [hereinafter CAMEROON ECONOMIC TRENDS]. *See also Cameroon: Social Issues to the Fore*, AFR. ECON. DIG., 19 Mar. 1990, at 15, 16; *Cameroon: Donor Support*, AFR. RES. BULL., 30 Apr. 1990, at 9903.

4. CAMEROON ECONOMIC TRENDS, *supra* note 3, at 5.

5. *See* Ordinance Law No. 90/001 of Jan. 1990 to Establish the Free Zone Regime in Cameroon. The Law was drafted with the assistance of the Overseas Private Investment Corporation and the United States Agency for International Development. *See* CAMEROON ECONOMIC TRENDS, *supra* note 3, at 7.

6. Ordinance Law No. 90/7 of 8 Nov., 1990 [hereinafter 1990 Code or the Code].

7. *See* Bill No. 407/PJL/AN to Authorize the President of the Republic to revise by Ordinance Law No. 84/3 of 4th July, 1984, to Institute the Investment Code, Nat'l Assembly, 4th Leg. Period, Leg. Year 1989/1990, 2d Ordinary Sess., Nov. 1989 [hereinafter 1990 Code Bill]. It was widely acknowledged that the 1984 Code, having failed to stanch the country's fiscal hemorrhage, had also become a major obstacle to the government's strategy to contain the economic crisis. Its revision was made a principal condition for the release of urgently needed credits by the World Bank and the IMF. *Id.*

8. 1990 Code, *supra* note 6, art. 1(2).

resource use, and entrepreneurial development. The degree to which the draftsmen have been successful in establishing this linkage is the focus of this article. Since the 1990 Code is the product of an economic reform movement in the country, its provisions will be reviewed against the backdrop of the old 1984 Code in an attempt to determine whether the drafters have been successful in breaking away from the mistakes of the past. But to understand the Code, it is helpful to situate it in the context of Cameroon's approach to FDI in the last three decades.

I. Background to Cameroon's Approach to Foreign Investment

Since Cameroon became independent in 1960, the government has targeted FDI as an essential ingredient in its industrialization policy. Each of the three investment laws enacted between 1960 and 1990 was intended to reflect the prevailing economic environment and to work within its constraints in implementing the government's economic development plan. The first legislation on investments was passed in 1960[9] at a time when the country was faced with a shortage of capital and know-how.[10] The little industrialization taking place was aimed basically at setting up local industries to manufacture imported goods. Since capital at the government's disposal was limited and the prospect of mobilizing resources internally was slim, the 1960 Code became the instrument for attracting foreign capital and technology to help in prosecuting the development plan.[11] As a consequence, this Code placed primary emphasis on the "creation of conditions most favourable to the importation not only of equipment and

9. Law No. 60/64 of 27 June 1960, *as amended & supplemented by* Law No. 66/LF/5 of 10 June 1966 [hereinafter 1960 Code]. The 1960 Code was promulgated before the formation of the Federal Republic of Cameroon in October 1961 following the unification of the Republic of Cameroon—former Cameroun under French Trusteeship and the British Trust Territory of Southern Cameroons. In any event, the 1960 Code was applied within the entire federation.

10. *See* Bill No. 279/PJL/AN to Institute the Investment Code of Cameroon, Nat'l Assembly, 3d Leg. Period, Leg. Year 1984/1985, 1st Ordinary Sess., June 1984, at 1 [hereinafter 1984 Code Bill]; *see also* Law No. 86–11 of 14 Aug. 1986 to Approve the Sixth Five-Year Economic, Social and Cultural Development Plan 1986–1991, Ministry of the Plan and Regional Development, Ch. X [hereinafter Sixth Plan].

11. 1984 Code Bill, *supra* note 10. The total investment under the first development plan (1961–66) was 100,000m. francs CFA; about 40 percent of the government investment was domestically financed, but the bulk of the quasi-public and monetary-private represented foreign borrowing, private capital inflows and reinvested foreign enterprise earnings. During the second plan (1966–71), gross investment was about 42,000m. francs CFA from the government, 55,000m. quasi-public institutional (including marketing boards, railways and ports) and 77,500m. private (including up to 27,500m. direct investment in the nonmonetary and self-help sector). The third Plan (1971/72–1975/76) had a target gross investment of 280,000m. francs CFA, about half public and quasi-public and half private, although actual investment appears to have totalled about 250,000m. francs CFA. The fourth plan called for the total investment of 725,232m. francs CFA over 1976–81, about two-thirds by the public sector. As with previous Plans, more than half of the finance was expected to be external. *See* E. HODGKINSON, CAMEROON ECONOMY 320, 322 (1989).

capital goods but also of raw materials."[12] Towards this end, the 1960 Code concentrated most of its incentives and guarantees on foreign as opposed to domestic investors. Four of the Code's preferential regimes were geared towards investments coming from abroad. The only regime that was specifically designed for, and targeted to, local enterprises, the small and medium-sized undertakings, was accorded low priority in the Code's incentives framework.

While the 1960 Code may have met the needs of Cameroon's first phase of industrialization, it became evident by the late 1970s that the law was flawed in many respects. To begin with, even though the 1960 Code was unabashedly solicitous toward foreign investors by granting them generous incentives under the special schedules, the flow of investment capital into the country was below what had been expected. A government study later concluded that these preferential investment regimes "did not attract as many undertakings as they would otherwise have."[13] By the close of 1979 over 40 percent of the enterprises eligible for admission into one of four special schedules did not take advantage of the benefits these investment regimes offered.[14] The small and medium-sized enterprises (SME) schedule, on the other hand, fared much better, attracting more investor attention than the preferred schedules. Over 50 percent of enterprises approved for admission under the 1960 Code were SMEs, compared to 26.5 percent for companies under the special schedules.[15] In addition to the uneven distribution of investments among the various schedules, the 1960 Code also failed to have any real impact on the government's policy of industrial deconcentration. The overwhelmingly majority of approved enterprises—more than 80 percent—was concentrated around Douala (the commercial capital) and Yaounde (the administrative and political capital).[16]

The disappointing performance of the 1960 Code led to calls for its revision. In the explanatory statement accompanying the Bill to revise the 1960 Code the following were cited as its major defects:

[1] a juxtaposition of several laws and regulations;

[2] no clear definition of objective criteria for placing an undertaking under a given schedule;

[3] approval procedures [for approving an undertaking] long and cumbersome;

[4] lack of incentives to increase the market value of local raw materials;

[5] measures to encourage exports insufficient;

12. 1984 Code Bill, *supra* note 10.

13. *Id.* at 4.

14. *Id.*

15. As of December 10, 1984, 716 businesses had received a favorable response from the Interministerial Committee charged with the coordination of investments and development. Of the 452 businesses actually approved, 242 were approved under the SME schedule, 120 under the special schedules, and 28 under the Tourism Schedules. *See* 1984 Code Bill, *supra* note 10, at 3.

16. *Id.* at 4.

[6] not enough incentives or encouragement given to small and medium-sized undertakings and to the Cameroonization of jobs;
[7] Schedules "C" and "D" last too long;
[8] inability to reduce industrial concentration;
[9] inability to mobilize large-scale investments outside the agro-industrial sector;
[10] no actual control of commitments entered into.[17]

The 1984 Code was intended to correct these shortcomings. Like the predecessor regime, the 1984 Code was designed to address the prevailing economic realities, much of which had changed in the intervening decade and a half. In the early years of independence, agriculture was the dominant economic activity in the country. The 1960 Code recognized the importance of this sector and was quite successful in mobilizing resources for the agro-industrial sector. As a result, Cameroon was able, in the two decades after independence, to export a wide range of agricultural exports and to develop self-sufficiency in food.[18] Thus, on the eve of the promulgation of the 1984 Code[19] the economic environment was quite different from that which gave rise to the 1960 Code. As one commentator notes:

> Cameroon enjoyed sustained economic growth from independence in 1960 through 1985. In the 1970s and early 1980s economic growth averaged about 8 percent per year. An important contributor to growth was the country's rich and diverse agricultural base, on which the government placed considerable emphasis. But growth really soared when petroleum production commenced in 1978 from the country's small offshore fields.[20]

Significant development of the petroleum sector began in the late 1970s, and by 1980 petroleum had become the country's principal export commodity. As the petroleum industry grew in importance, the contribution of agriculture, forestry, and fishing to the country's GDP declined concomitantly, from 32 percent in the year ending June 1979 to 21 percent in 1984–85.[21] The revenue yield from Cameroon's "black gold" had a profound impact on the country's fiscal position, as it ushered in a period of rapid rise in both current and capital spending. Between 1975 and 1987 current spending increased fivefold, from 80,600 million francs CFA (CFAF) in 1975–76 to 460,000 million CFAF in 1986–87. The rise in current spending was also accompanied by a parallel exponential growth in capital spending, which increased from 19,400 million CFAF to 340,000 million CFAF during this same period. The expansion was particularly marked

17. *Id.* at 5.
18. *See* E. HODGKINSON, *supra* note 11, at 320.
19. Law No. 84/3 of 4 July 1984 to Institute the Investment Code of Cameroon [hereinafter 1984 Code or the old Code]; *see also* Decree No. 84-1489 of 21 Nov. 1984 (specifying the procedure for granting benefits under the investment code).
20. *See* CAMEROON ECONOMIC TRENDS, *supra* note 3, at 4.
21. *See* E. HODGKINSON, *supra* note 11, at 320.

between 1980–81 and 1985–86, averaging more than 30 percent per year at current values, as spending on infrastructure increased under the 1981–86 Fifth Five-Year Development Plan (Fifth Plan).[22] As with previous Plans,[23] the Fifth Plan, which presaged the enactment of the 1984 Code, also looked to the private sector and external sources to provide some of the financing.[24] The Fifth Plan, however, marked a shift in orientation in the government's industrial policy with a new emphasis on the strategy of "endogenous industrialization."[25]

This new emphasis was reflected in the 1984 Code, whose fivefold objectives were to accelerate:

> [1] the processing of . . . local raw materials as a priority;
> [2] the setting up of heavy industries which would encourage the creation of industries for the production of intermediate and capital goods;
> [3] the reorganization and development of the national industrial landscape for a better regionalization of industrial activities according to the natural or potential attraction of the regions or towns in which industries are located;
> [4] the setting up of basic infrastructures (communications and telecommunications, social and collective amenities . . .) which should come along with the industries;
> [5] the intervention of the State in those areas of industry considered to be of strategic importance.[26]

In short, the 1984 Code was charged with the task of creating an investment climate that would "broaden the ownership and employment participation of Cameroonians in the directly productive sector"[27] while permitting some degree of state participation in strategically important industries, such as the petroleum industry, banking, insurance, and utilities.[28] While the drafters talked of a code with a built-in "endogenous industrialization" bias, what they produced was an investment regime that operated as a vehicle for a policy to import substitution.[29] The special schedules gave rise to a highly protective system with uneven levels of protection between foreign and domestic, large and small enterprises, thus operating to discourage exports and encourage imports.

The 1984 Code's long and complex admission requirements and procedures encouraged capital-intensive investments ill-suited to Cameroon, where jobs could be generated through SMEs. Its system of incentives also operated as a

22. *Id.*
23. *Id.*
24. Twenty-four percent of gross investment under the fifth plan was financed from foreign borrowing, private capital inflows, and reinvested foreign enterprise earnings. *See id.* at 322.
25. *See* 1984 Code Bill, *supra* note 10, at 5.
26. *Id.* at 5–6.
27. *See* E. HODGKINSON, *supra* note 11, at 320.
28. *See* 1 BUS. INV. & TAX'N HANDBOOK (Touche Ross) Cameroon-2 (1989).
29. 1990 Code Bill, *supra* note 7.

double-edged sword; some incentives caused numerous distortions in the economy that had a negative impact on the Cameroonian consumer, while others favored foreign investors at the expense of domestic industries. Among the former was the structure of quantitative import restrictions that prevented competition in price and quality and contributed to increased delays in supplies. As a result, increased gains from the scarcity of consumer goods contributed to the high prices that consumers had to pay for them. Price distortions aside, the 1984 Code's high import tariffs failed to protect infant industries and instead encouraged an active market in goods brought into the country illicitly.[30]

Furthermore, the differential in tariff rates between substitutes or among products processed to varying degrees did not allow for spontaneous, competitive development of productive activities. By providing for complete exemption from duties and taxes on imported goods, the 1984 Code succeeded only in discouraging local production of intermediate products, thus making any shift to an endogenous industrialization difficult. Soon these contradictions became self-evident, leading to the inescapable conclusion that the strategy of giving priority to import-substitution activities had limited success and needed to be reevaluated. This reassessment finally led to the adoption of the 1990 Code, which is dedicated to an export-oriented industrialization strategy.

II. A Legal Analysis of the 1990 Code

The 1990 Code attempts to strike a balance between performance requirements, which tend to discourage potential investors, and incentives designed to reassure investors of the government's commitment to create a climate conducive to foreign private investment. The result is a mixed bag of requirements and restrictions with respect to local ownership, employment and training, local content, technology transfer, domestic sales carefully balanced with tariff protection schemes, tax holidays, guarantees on capital transfers, and protection from expropriation.

A. Preferential Regimes or Special Schedules

Article 15 establishes five special schedules, one less than preferential investment regimes under the 1984 Code. The designation of these schedules, the conditions of admissions, and the duration of benefits granted have also changed substantially under the 1990 Code. Schedule A of the 1984 Code has been replaced by the Basic Schedule. The SME and Strategic Undertakings Schedules bear some resemblance, at least in name, to the old Schedules C and D. Two additions to the new Code's preferential regimes are the Free Trade Zone Sched-

30. Interview with officials in the Ministry of Trade and Industry, Yaounde (July–Aug. & Dec. 1990).

ule,[31] which is governed by a separate legal regime, and the Reinvestment Schedule.[32] Old and new investors alike are eligible for the benefits offered by the Special Schedules. Furthermore, fiscal benefits based on a combination of performance criteria such as job creation and training opportunities, export production potential, and value added are available to investors.

1. *Conditions for Admission*

Articles 17, 18 and 19 set forth the general conditions for admission to a preferential regime. An enterprise seeking to enjoy the benefits granted under any of the special schedules must comply with all applicable laws and regulations and possess an approval document.[33] The enterprise must also have an authorized list of equipment, factory construction materials, equipment goods, machines, tools, and means of transportation to be imported in connection with the proposed investment.[34]

a. Approval Process

Prior to initiating business operations, a prospective investor was required under the old Code to obtain a number of permits and licenses.[35] Some businesses needed over twenty permits and licenses, which, to secure, could take from five to twenty-four months, or even longer.[36] The 1990 Code greatly simplifies the approval process by removing many of the barriers to prospective investors. Article 24 transforms the investment application procedures into a "one stop" process open to both foreign and domestic private investors.

i. Basic Schedule. Article 20 sets forth three specific conditions for admission to the Basic Schedule. At a minimum, the enterprise must be capable of creating one job for Cameroonians for every investment of ten million francs CFAF. In addition, at least 25 percent of the company's annual pre-tax turnover within the Franc Zone[37] (10 percent outside this zone) must be generated from its export activity. Finally, an enterprise placed under the Basic Schedule is required to produce goods and services in which the share of the domestic value added is at least 25 percent.

31. 1990 Code, *supra* note 6, art. 31.

32. *Id.* art. 32.

33. The approval document must show the name and articles of association of the enterprise, its location, the material and financial capital it proposes to invest, its employment and vocational training policy, and its objectives which must conform to the eligibility criteria corresponding to the schedule under which the enterprise is placed. The approval document must also show the eligibility criteria for which it was approved by the administering authority, the list of approved equipment and the purpose of the proposed investment, the schedule and benefits granted to approved enterprise, and the date of entry into force of the benefits granted. *Id.* art. 19.

34. *Id.* art. 18.

35. 1984 Code, *supra* note 19, § 19.

36. *See* J. E. AUSTIN ASSOC., CAMEROON: MAPS PRIVATE SECTOR DIAGNOSIS 15 (1990) [hereinafter Private Sector Study].

37. For a definition of the Franc Zone, see *infra* note 83.

ii. SME Schedule. An enterprise qualifies for benefits under the SME Schedule if 35 percent (down from 65 percent under the old Code) of its equity is owned by nationals; if it is willing to invest a minimum of 500 million CFAF and a maximum of 1,500 million CFAF in an economic activity in Cameroon; and if it creates one permanent job for every investment of 500 million CFAF.[38]

iii. Strategic Enterprises Undertakings Schedule. An investment may be considered for admission to the Strategic Enterprises Undertakings Schedule if it is "considered to be strategic for the Industrialization Pilot Project" and if it fulfills either of the following conditions: it has a production for export equal to 50 percent of its annual pre-tax turnover (25 percent if its turnover is in currency convertible outside the Franc Zone) or the share of domestic value added in its goods and services produced in Cameroon is at least 50 percent.[39] An enterprise approved under this regime is also expected to create one permanent job for each investment of 20 million CFAF.[40]

iv. Reinvestment Schedule. The Reinvestment Schedule is open to an enterprise not previously admitted into one of the Special Schedules or one operating under an expired schedule.[41] A business qualifies for the benefits under this schedule when its investment program is placed under the reinvestment schedule of the General Tax Code. In addition, the investment program must ensure an increase in productivity and either an increase in the production of goods and services or an increase in the number of permanent local personnel by at least 20 percent over the number employed at the time of the initial investment.[42] In the alternative, the investment program, to the extent that it involves lodging establishments, will enjoy benefits under this regime if it elevates the enterprise to a higher category of benefits than it previously enjoyed during the initial investment.[43]

2. *Incentives*

Articles 21 to 24 set forth the various incentives available to all approved investments under the 1990 Code. In addition to this generalized scheme of benefits, the Code also provides a customized set of incentives that apply only to the specific schedules. Incentives are progressively granted as an approved enterprise moves from the establishment or installation phase to the operational or exploitation phase.[44] The distinction between the start-up and operational phases of an undertaking is a new provision and should accomplish two things. First, it

38. 1990 Code, *supra* note 6, art. 25.
39. *Id.* art. 28(1).
40. *Id.* art. 28(2).
41. *Id.* art. 32.
42. *Id.* art. 32(2).
43. *Id.* art. 32(3).
44. *Id.* art. 19(2).

should allow the government to control the pace that benefits under the Code are extended to preferred investors. Second, it should provide an opportunity for periodic review of approved investments for compliance with the commitments made in the investment application. Article 19 contemplates this close monitoring process providing that the process of transferring benefits from one phase to the other shall be subject to verification. Article 35 provides that "[t]he end of the establishment phase of the enterprise shall be determined by the results of the control carried out by the authorities in charge of industry and finance." An approved enterprise will not be cleared for benefits in the next phase unless there is evidence that its equipment conforms to the investment program, and verification of supporting documents for imported goods and goods purchased locally under the stipulated conditions laid down in the article 19 approval document is possible.[45]

The periodization of benefits also has the salutary effect of affording both the investor and the host government an opportunity to reexamine their business relationship at suitable intervals to see if any changes are necessary. Usually an investor discovers during the start-up phase that it is not worthwhile to continue the project, but is unable to abandon the undertaking for fear of incurring substantial losses. Host governments have also had occasion to regret the terms of an investment bargain, particularly in those instances where the investor got the better of the bargain. The idea of dispensing benefits in carefully measured doses opens the door for those having second thoughts about the deal either to renegotiate the terms or cut their losses before they become too heavy to bear. This is a definite improvement over the old Code.

45. The old 1984 Code contained a much more elaborate monitoring procedure. All approved foreign enterprises were subject to inspection and control by the Ministry in charge of industry and by customs authority. *See* 1984 Code, *supra* note 19, §§ 6, 18. Inspection was necessary to ensure that foreign enterprises granted benefits under the code were in compliance with the commitments entered into in the approval document or the establishment convention. *Id.* § 20(1). The approval document contained, among other things, the enterprise's commitments to the State, and where applicable, other special obligations. These obligations included the terms and conditions of the specific control to which the enterprise was subject and the penalties provided for failure to meet those commitments. *Id.* §§ 16, 32. A foreign enterprise granted benefits under the old Code was also required to forward to the Ministry in charge of industry its annual report of activities and its balance sheet and accounts three months following the end of its financial year. The balance sheet and accounts had to be certified by a professionally qualified accountant licensed with the Central African Customs and Economic Union (UDEAC). *Id.* § 37. This is no longer required under the 1990 Code.

Approved foreign enterprises were also subject to inspections conducted by officials from the Ministry in charge of industry during business hours. During such visits and on presentation of a warrant, officials from the Ministry could ask to see documents relating to the enterprise's activity from all industrial undertakings. Ministry Officials could also demand and receive copies of documents which they considered necessary for the accomplishment of their mission; and, without the need for the presence of a judicial police officer, had free access to any place used for industrial and commercial purposes by the enterprise. *Id.* art. 41. Any violation of the control and inspection provisions of the Investment Code was punishable either by a fine or complete withdrawal of approval. *Id.* § 43.

a. Start-up Phase Incentives

Articles 21 and 22 set forth the benefits during the establishment or installation phase.[46] During this initial period, all approved investments enjoy a 15 percent reduction on customs duties, turnover tax and all other import duties on equipment, material for the construction of a factory or an establishment, capital goods, and machines and tools as well as rolling stock that is directly linked to the production, manufacture, and distribution processes.[47] There is also complete exemption from a purchase tax on locally produced goods during the start-up phase.[48] In addition, approved enterprises are exempt from registration fees in respect of capital increases, on leases of premises used exclusively for vocational training in connection with the investment, and on contracts for the supply of equipment and the construction of houses necessary for the implementation of the investment program.[49] These businesses also enjoy total or partial exemption from a variety of taxes including the internal turnover tax,[50] the minimum fixed tax (IFT), the special company tax (SCT), taxes on loans contracted in respect of the investment, the special tax on the registration of the enterprise's insurance contracts and[51] the transfer tax on acquired premises, real estate, and buildings necessary for the implementation of the investment program.[52]

Access to these benefits are subject to the guarantee requirements set forth in article 22. This article requires investors to guarantee the difference between import duties and taxes payable under the ordinary law and the amount of fees resulting from the schedule under which the enterprise is placed less penalties. These requirements are automatically lifted once the enterprise goes into full operation.[53]

46. For enterprises placed under the Basic and SME Schedules, the duration of this phase is three years and five years for investments approved under the Strategic Undertakings Schedule. *See* 1990 Code, *supra* note 6, arts. 21, 26, 29. A careful reading of those provisions would suggest that this period may be extended to seven or nine years depending on the special schedule. Art. 34(1) establishes a two-year deadline following the end of the establishment phase during which an approved enterprise must fulfill the criteria under which it was approved. *Id.* art. 34(1). Art 34(2) further provides that this initial two-year extension may again be extended for a further two years in the event of a "duly established force majeure or where the undertaking provides valid justifications." *Id.* art. 34(2). It follows that a company admitted to, say, the Basic Schedule can, under the Code, continue to enjoy its phase 1 benefits by extending the start-up phase from three to five and then to seven years.

However, an approved investment that reaches the operational phase before the end of the three- or five-year establishment period may cease to enjoy the benefits provided for it during this phase. *Id.* art. 37.

47. *Id.* art. 21(1)(a).

48. *Id.* art. 21(1)(b).

49. *Id.* art. 21(1)(b)(2)-(3), (5).

50. The internal turnover tax is a tax on the amount of money received from the sale of goods and services. This tax is assessed at the rate of 8–10 percent against natural persons or corporate bodies undertaking taxable transactions. *See* GENERAL TAX CODE arts. 227–250 (1988).

51. 1990 Code, *supra* note 6, art. 21(6)-(9), (11).

52. *Id.* art. 21(4).

53. *Id.* arts. 36, 37.

b. Operational Phase Benefits

As approved enterprises enter the operational phase, they are entitled to the generalized scheme of benefits set forth in article 23. They continue to enjoy complete exemption from the special company tax granted during the start-up phase and are also exempt from the minimum charge payable under company tax.[54] In addition, they are allowed a 50 percent reduction of the company tax[55] for corporate bodies, an equivalent reduction for industrial and commercial profits for entrepreneurs and individuals, and a 50 percent reduction of the proportional tax levied on the income of movable assets. The benefits set forth in article 23 also include a loss carryforward provision, which allows deficits of depreciation normally taken into account during the first three years to be set off against future taxable profits for a period of five years.[56]

Finally, SMEs and strategic enterprises are allowed a reduction in taxable revenue of 25 percent of their payroll that cannot be carried forward and which is paid to their Cameroonian personnel.[57]

c. Particularized Benefits

Consistent with the government's policy to shift from import substitution to an export-based economy, special incentives have been set aside for enterprises that are export-oriented. In addition, the Code provides a package of incentives aimed at encouraging the use of Cameroon's important resources. These benefits are not tied to any particular phase of operations. Domestic companies whose finished or semifinished goods are processed in Cameroon for export are exempt from export, insurance, and transportation charges under article 10. They are also allowed a tax deduction of 5 percent of the F.O.B. value of their exports.[58]

Enterprises may qualify[59] for additional benefits under the Code if they use country-source materials in their manufacturing operations. For the duration of their activities in Cameroon, these enterprises enjoy complete exemption from "all duties and taxes on the purchase of national raw materials of local or UDEAC[60] origins, or water and electricity for industrial use, and on intermediary

54. The minimum charge payable under company tax is an amount not less than the sum resulting from a rate of 1 percent applied to the gross turnover realized on all transactions forming part of a taxable entity's activity during the previous financial year or a sum of 400,000 francs CFA. *See* GENERAL TAX CODE arts. 24–25.

55. The rate of tax on companies is 38.5 percent. *Id.* art. 15.

56. 1990 Code, *supra* note 6, art. 23(5).

57. *Id.* arts. 27(2), 30(2).

58. *Id.* art. 11.

59. To qualify for these benefits the enterprise must first obtain the Inland Tax on Production (ITP) schedule to ascertain the amount of tax that will be levied on its products. *Id.* art. 12(2). Furthermore, an approved enterprise must guarantee the difference between import duties and taxes payable under the ITP schedule less penalties and those paid under the Code. The guarantee is withdrawn at the end of the third year of operations. *Id.* art. 14.

60. The Union Douanière et Économique de l'Afrique Centrale (UDEAC) is comprised of Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea, and Gabon.

products of local or UDEAC origin that are used in whole or in part for the production of finished or processed products . . . ."[61] They also receive a reduced rate of 15 percent of import duties and taxes as well and exemption from the turnover tax on: (1) raw materials or products imported from outside the UDEAC zone[62] that are wholly or partially used to make the finished or manufactured products; and (2) disposable raw materials or products intended for packaging or wrapping the finished manufactured product.[63]

3. *Duration of Benefits*

The duration of benefits for approved investments varies with schedules. Enterprises approved under the Basic Schedule enjoy benefits for a period of eight years: three years during the start-up phase[64] and five years, nonrenewable, when the enterprise goes into full operation.[65] Article 26 provides for a three-year start-up period during which SMEs can enjoy article 21 benefits, while article 27 contemplates a seven-year renewable period for benefits during the exploitation phase for a total of seventeen years. For Strategic Enterprises with a five-year start-up phase and an additional twelve years nonrenewable exploration phase, benefits under the Code are effectively enjoyed for at least seventeen years.[66]

The periods for benefits do not reflect one of the major shortcomings of the old Code—the rather long duration of benefits granted to approved enterprises.[67] Under the 1984 Code Schedules A[68] and B,[69] undertakings were entitled to benefits for a ten-year period. Schedule C undertakings [70] enjoyed benefits for ten to fifteen years, and the duration was fifteen years for Schedule D undertakings.[71] This situation is not changed appreciably under the 1990 Code. If anything, this Code provides for even longer periods during which benefits can be enjoyed by approved enterprises. The periodization of benefits into start-up and operational phases, and the concept of nonrenewal of investments after a certain time may give the illusion that benefits under the 1990 Code are granted over a limited period, but that is not the case. With the exception of the Basic Schedule, in which benefits are limited to eight years, the seventeen-year[72] duration of benefits for the other special schedules is in excess of what the 1984 Code allowed.

61. 1990 Code, *supra* note 6, art. 12(1).
62. *Id.* art. 13.
63. *Cf.* 1984 Code, *supra* note 19, §§ 23, 25, 27, 30.
64. 1990 Code, *supra* note 6, art. 21.
65. *Id.* art. 23.
66. *Id.* arts. 29–30.
67. *See* 1984 Code Bill, *supra* note 10, at 5.
68. 1984 Code, *supra* note 19, § 22.
69. *Id.* § 24.
70. *Id.* § 26.
71. *Id.* §§ 29–30.
72. These compare favorably to the duration for benefits in other African investment codes such as Zaire's and Côte d'Ivoire's. *See* Kofele-Kale, *supra* note 1.

B. Other Provisions

1. *Local Ownership Regulations*

The right of individuals or corporate entities, foreign or domestic, to engage in economic activity in Cameroon[73] is guaranteed under the 1990 Code.[74] Foreign investors may engage in business as individuals or in a partnership and are entitled to the same rights as those enjoyed by nationals,[75] including the rights governing property ownership, concessions, and administrative authorizations.[76] As in the old Code, there is only one specific reference to the local ownership requirement, which is found in article 25. The old requirement that 65 percent of the equity in enterprises placed under the SME Schedule must be owned by Cameroonians[77] has now been reduced to 35 percent.[78] There are no local ownership requirements for investments admitted into the other preferential regimes.

2. *Guarantees of Transfer*

The 1990 Code provides for transfer guarantees for foreign investors in connection with dividends, royalties, debt service, and any expropriation indemnity. Article 4, which is new, provides a basic guarantee against expropriation, nationalization, or requisition of private property "without prior compensation that is just[,] equitable and based on a proper evaluation of the undertaking or of its property by an independent third party."[79] Under article 9, also new, all approved investments are guaranteed against noncommercial risks in conformity with Article 15 of the treaty instituting the Multilateral Investments Guarantee Agency (MIGA).[80] Capital repatriation and the remittances of dividends, royalties, and interest is guaranteed to all foreign investors,[81] including, for the first time, nonresident investors.[82]

73. Art. 16 sets forth the sectors of the economy that are open to foreign private investors. It is a much-expanded list compared to the 1984 Code. Excluded from the list of sectors open to foreign investments are telecommunications and internal air services. 1990 Code, *supra* note 6, art. 16.

74. *Id.* art. 2(1).

75. *Id.* art. 2(3).

76. *Id.* art. 2(4)(1).

77. 1984 Code, *supra* note 19, § 26.

78. 1990 Code, *supra* note 6, art. 25.

79. *Id.* art. 4(2); *But cf.* Treaty Concerning the Reciprocal Encouragement and Protection of Investment, Feb. 26, 1986, United States-Cameroon, art. III, *reprinted in* [Investment Treaties] Inv. Laws of the World: 1986 (ICSID) 1, 7 (June 1986) [hereinafter U.S.-Cameroon Investment Treaty] ("[E]xpropriations or nationalizations give right to prompt, adequate and effective compensation . . . .")

80. Cameroon is a signatory of the MIGA Treaty. MIGA is a World Bank-affiliated agency which guarantees eligible foreign investments against losses resulting from noncommercial risks such as expropriation, civil unrest, and restrictions on currency transfers. American investors can also benefit from protection and guarantees provided by the Overseas Private Investment Corporation pursuant to a bilateral treaty between Cameroon and the United States of America. *See* U.S.-Cameroon Investment Treaty, *supra* note 79.

81. 1990 Code, *supra* note 6, art. 8(2). The tax on dividends and interest is 16.5 percent and 24.2 percent for royalties. *See* General Tax Code art. 15.

82. 1990 Code, *supra* note 6, art. 8(1).

Cameroon's membership in the Franc Zone guarantees her the availability of foreign exchange and unlimited convertibility of the CFA franc with the French franc at a fixed rate.[83] This guarantee provides considerable monetary stability and greatly simplifies the problem of international payments by foreign investors.[84] Authorization from the Ministry of Finance is, however, required for most transfers outside the Franc Zone.[85] Investments from outside the Franc Zone must be declared at the time they are made and confirmation is obtained from the appropriate ministries that the normal guarantees for the repatriation of capital are applicable.[86] With regard to transfers within the Franc Zone, no restrictions apply except that transfers exceeding 500,000 CFAF must be declared.[87]

3. *Dispute Resolution*

The 1984 Code did not contain an explicit provision for resolving investment disputes between foreign investors and the host state. It did, however, provide

83. *See* Kofele-Kale, *supra* note 1, at 383. The Franc Zone is made up of a West and a Central African monetary union, the Union Monetaire Ouest-Africaine (UMOA) (consisting of Benin, Burkina Faso, Côte d'Ivoire, Niger, Senegal, Togo, and since 1984, Mali), and the Banque des États de l'Afrique Centrale (BEAC) (comprising Cameroon, the Central African Republic, Chad, Congo, Gabon, and since 1985, Equatorial Guinea). UMOA and BEAC are in turn linked to France through a monetary union, the Communautaire Financière Africaine (CFA). These interlocking unions form the Franc Zone. Although the countries that make up UMOA and BEAC belong to the Franc Zone and denominate their currencies in the same "CFA franc," nevertheless, each union maintains a separate and distinct identity with its own currency. The advantages of membership in the Franc Zone are threefold. First, it provides for monetary integration. The member countries pool 65 percent of their foreign exchange reserves with the French treasury, thus avoiding the seigniorage costs of holding reserves. Secondly, so long as member states of the Franc Zone implement certain stipulated monetary, credit, and exchange policies, the convertibility of the CFA franc against the French franc is guaranteed by the French Central Bank at, thirdly, a fixed exchange rate of 50 CFA franc for 1 French franc. This rate has not varied since 1948 and any parity adjustment requires the unanimous consent of zone members. *See* Devarajan & de Melo, *Adjustment with a Fixed Exchange Rate: Cameroon, Côte d'Ivoire, and Senegal,* 1 WORLD BANK ECON. REV. 447, 448–49 (1987); Guillaumont, Guillaumont & Plane, *Participating in African Monetary Unions: An Alternative Evaluation,* 16 WORLD DEV. 569, 573 (1988) [hereinafter *African Monetary Unions*]; see also J. BOURDIN, MONNAIE ET POLITIQUE MONETAIRE DANS LES PAYS AFRICAINS DE LA ZONE FRANC (1982); P. GUILLAUMONT & S. GUILLAUMONT, ZONE FRANC ET DEVELOPPEMENT AFRICAIN (1984); P. ROBSON, INTEGRATION, DEVELOPMENT AND EQUITY: ECONOMIC INTEGRATION IN WEST AFRICA (1983); J. WILSON, FRENCH BANKING STRUCTURE AND CREDIT POLICY 103–33 (1957); Kahler, *International Response to Economic Crisis: France and the Third World in the 1970s,* in FRANCE IN A TROUBLED WORLD ECONOMY 76 (S. Cohen & P. Gourevitch eds. 1982).

84. In a 1990 survey of 500 major U.S. corporations doing business in developing countries, Dr. Cynthia Day Wallace sought to identify the factors considered by these businesses as critical in the decision to invest in these countries. Guaranteed remittances of earnings was rated by an overwhelming 81 percent of the companies responding to her survey as the most critical factor influencing market-entry decisions. This factor was ranked higher than the threat of war/hostilities, protection from expropriation, and, quite surprisingly, unfavorable host-country investment laws. *See* Wallace, *Foreign Direct Investment in the Third World: United States Corporations and Government Policy,* in FOREIGN DIRECT INVESTMENT IN THE 1990S: A NEW CLIMATE IN THE THIRD WORLD 148, 154–56 (C. Wallace ed. 1990).

85. *See* U.S. DEP'T OF COM., FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES, IVORY COAST 9 (1988)

86. *See generally* Kofele-Kale, *supra* note 1.

87. *Id.*

that the state could withdraw benefits under the Code from an approved enterprise, and if the withdrawal resulted in injury to the state, the state could bring suit for damages in the local courts.[88] The old Code was also silent on the question of injury to the foreign investor from an arbitrary and capricious withdrawal of benefits by the state. Under that code the hapless foreign investor had no legal recourse. The new Code restores some semblance of symmetry in the rights enjoyed by parties to an investment agreement and their correlative obligations. It provides for a more balanced approach to the resolution of investment conflicts.

Article 42 grants the state the right to withdraw benefits, as an extreme measure, from an approved enterprise. The state may exercise this right: if the enterprise fails to comply with the terms stipulated in the investment agreement,[89] if it does not submit to an authorized inspection of its facilities,[90] or if it neglects to forward an annual report on its investment program to the ministry in charge of industry within six months from the beginning of the financial year.[91]

Articles 44 and 45 set forth a dispute resolution mechanism for investments under the Code. Under article 44 the parties may choose to settle their disputes in the courts of Cameroon, presumably applying Cameroon law or any other choice of law.[92] In contrast, article 45 reserves, to the foreign investor operating in Cameroon, the right to have any disputes pertaining to the validity and interpretation of the investment agreement resolved through arbitration or conciliation under the rules of the International Chamber of Commerce (ICC) or the International Centre for the Settlement of Investment Disputes (ICSID).[93] Alternatively, the disputants may use procedures specified in a bilateral investment treaty between Cameroon and the investor's home state.[94] In order to take advantage of

88. 1984 Code, *supra* note 19, § 51.

89. 1990 Code, *supra* note 6 art. 42(1).

90. *Id.* art. 42(2).

91. *Id.* This report must include data on the progress made by the enterprise toward achieving its investment objectives. *Id.* art. 40.

92. *See, e.g.*, CODE OF CIVIL AND COMMERCIAL PROCEDURE (CODE DE PROCÉDURE CIVILE ET COMMERCIAL) arts. 576–601, *reprinted in* 2 CODES ET LOIS DU CAMEROON 557 (Bouvenet & Bourdin, eds. 1956), *English translation* in 2 W.A.R. 1083 (1987).

93. Cameroon is a contracting party of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965. *See* International Convention on the Settlement of Investment Disputes Between States and Nationals of other States, Mar. 18, 1965, 17 U.S.T. 1270, T.I.A.S. No. 6090, 575 U.N.T.S. 159 (*entered into force* Oct. 14, 1966.) (Washington Convention). The ICSID dispute resolution machinery has been used only once in the last seven or eight years. *See* ICSID Case No. ARB/81/2, Klockner Industrie Anlagen GmbH v. Republic of Cameroon (Oct. 21, 1983), *analyzed in* Paulsson, *The ICSID* Klockner v. Cameroon *Award: The Duties of Partners in North-South Economic Development Agreements*, 1 J. INT'L ARB. 145 (1984). The original award in favor of Cameroon was subsequently annulled on May 3, 1985. The decision on annulment is published in 1 ICSID REV.—FOREIGN INVESTMENT L. J. 89 (1986). *See also* Niggemann, *The ICSID* Klockner v. Cameroon *Award: The Dissenting Opinion*, 1 J. INT'L ARB. 331 (1984).

94. Cameroon has signed bilateral investment promotion and protection treaties with the following countries: the United States, Belgo-Luxembourg Economic Union, Germany, the Netherlands, Romania, Switzerland, and the United Kingdom. *See* U.S.-Cameroon Investment Treaty,

article 45's provisions, an election to settle all investment disputes must be made at the time the foreign enterprise is incorporated, presumably under Cameroon law although the Code does not specifically state so, or when it applies for admission into the Code.[95]

III. The Code as an Instrument of Economic Policy

Once it became clear that the 1984 Code was incompatible with the government's strategy to contain the economic crisis,[96] it was promptly replaced with a new framework to promote and protect private investment. The 1990 Code, like its predecessor, is intended to operate as an instrument of economic policy.[97] How well the Code succeeds in this role will depend on a number of factors, including its ability to attract substantial autonomous capital as well as technology and management skills into the country. However, the 1990 Code must attract the right kind of investments, those that will contribute toward the achievement of the government's announced economic priority objectives. This section evaluates the provisions of the Code in light of its stated objectives and within the broader context of the government's economic reform program.

A. The Matter of Definitions

A glaring gap in the Code is the omission of a section for definitions of key terms. As a result, there is no way of knowing how much foreign participation is necessary to constitute "foreign investment" under the Code. The failure of the Code to specify guidelines for determining whether an investment qualifies as foreign is illustrated in the following example. Assume a hypothetical foreign investor named AUTOMOBILES ARIANE, S.A. AUTOMOBILES ARIANE is a French transnational corporation which, together with several Cameroonian entrepreneurs, would like to open a car parts and minor transport equipment

supra note 79; on the Promotion and Mutual Protection of Investments, Mar. 27, 1980, Cameroon-Belgo-Luxembourg Economic Union, *published in* Official Gazette of the United Republic of Cameroon, No. 4, Dec. 31, 1980, at 342, *reprinted in* [2 Investment Treaties] Inv. Laws of the World: 1980 (ICSID) 25 (May 1983) (English translation *Id.* at 12). Concerning the Encouragement of Investments, June 29, 1962, West Germany-Cameroon, *reprinted in* [1 Investment Treaties] Inv. Laws of the World: 1962 (ICSID) 41 (Feb. 1983); Accord de Cooperation Economique et Technique July 6, 1965, Netherlands-Cameroon, *reprinted in* [1 Investment Treaties] Inv. Laws of the World: 1965 (ICSID) 55 (Feb. 1983); Agreement on the Reciprocal Guarantee of Investments, Aug. 30, 1980, *reprinted in* [2 Investment Treaties] Inv. Laws of the World: 1980 (ICSID) 90 (May 1983); Accord de commerce, de Protection des Investissements et de Cooperation Technique *entered into force* April 6, 1964, *reprinted in* [1 Investment Treaties] Inv. Laws of the World: 1963 (ICSID) 1 (Feb. 1983); for the promotion and protection of investments, *entered into force* June 7, 1985 *reprinted in* [2 Investment Treaties] Inv. Laws of the World: 1982 (ICSID) 41 (June 1986).

95. 1990 Code, *supra* note 6, art. 45(3).

96. *See supra* notes 29–31 and accompanying text.

97. *See supra* notes 7–8 and accompanying text.

plant in Cameroon to produce pistons, cylinder linings, batteries, spark plugs, brake pads, and springs for both the domestic and export markets. Both parties agree on a joint venture and incorporate a new entity, AUTOCAM, S.A., under the laws of Cameroon. The project will require an initial investment of 4,000 million CFAF. AUTOMOBILES ARIANE, S.A. will contribute 3,500 million CFAF and the Cameroonian partners will contribute 500 million CFAF. These investments will be made in return for equity shares.

In addition to the capital infusion of the equityholders, there will be an additional capital infusion in the form of capital equipment of approximately 4,500 million CFAF, for a total of 8,500 million CFAF of capital investment. The establishment of AUTOCAM, S.A. is anticipated to have a substantial positive impact on the economy of Cameroon. If the project is successful, according to the investment proposal, it will employ a large number of Cameroonians, thereby reducing unemployment, increasing the number of skilled and semiskilled workers as well as the country's GDP, and improving its balance-of-payments through its export earnings. It will also raise the standard of living for those employed and their families, provide investment opportunities for locally owned businesses, and in the long run, attract other foreign investors who will respond by infusing more capital and generating more employment-creation opportunities. In addition to these measurable positive externalities, the establishment of such a factory promises substantial psychic income for the government. An auto parts plant of the kind contemplated will enhance Cameroon's status as a newly industrializing nation with the capacity to export industrial goods as well as raw materials.

AUTOCAM, S.A. would like to finance about 4,500 million CFAF needed to import the equipment for the plant through long-term credits, although it is willing to assume a small amount of short-term obligations. Since the 1990 Code is silent on what constitutes foreign investment, conceivably, this entire amount can be raised from domestic sources. When you consider that AUTOCAM's French shareholder, AUTOMOBILES ARIANE, S.A., would most likely want to repatriate its profits, dividends, and royalty payments sometime during the life of the project, we thus have the anomaly of a code designed to attract fresh equity capital into the country implicitly endorsing capital flight. This turns the logic of private foreign investment on its head. The attraction of FDI over loans is that it allows for the movement of scarce resources—capital, technology, and know-how—from capital-rich countries like France to capital-starved countries like Cameroon.

This potentially absurd situation could have been avoided had the Code contained a definition of "direct private investment" that focused on actual investments. Foreign private investment should have been defined as investments from foreign sources, which could include capital contributions by foreign shareholders or partners, loans by foreign financial institutions, loans from manufacturers of machinery and equipment necessary for the investment undertaking, or by any other means that would result in a real infusion of fresh funds.[98] A developing country like Cameroon that is trying to reduce the need for external borrowing and wipe out its heavy debt burden and related debt-servicing obligations while at the same time preventing the reduction of its foreign currency reserves, would be much better off with investments that are wholly or largely from foreign sources.

B. The Code in the Context of a Policy of Investment-Led Growth

1. *Debt Management Tools*

The 1990 Code is short on debt management tools because of its failure to explore the use of creative investment arrangements as a means of encouraging private investment inflows as well as flight capital. This lacuna is even more surprising given the country's heavy external debt burden and the government's emphasis on a strategy of investment-led economic growth. Debt conversion programs,[99] which have been used with varying degrees of success[100] in many debt-burdened Third World countries both as a debt-reduction scheme and as an incentive for foreign investments,[101] are completely ignored in the Code. While debt swaps can take various forms, the three most prominent types are: debt-debt swaps, which involve a change of creditors holding developing country loans;

98. Under the Zairian Investment Code, for example, if all the promoters of an investment undertaking are foreigners, then funds from foreign sources must finance at least 80 percent of the total investment 30 percent of which must be equity investment. *See* Ordinance Law No. 86-028 of Apr. 5, 1986, art. 7, Journal Officiel de la Rèpublique du Zaire (Apr. 1986), *reprinted in* 10 Inv. Laws of the World: Zaire (ICSID) 25, 28 (1987).

99. Commentators have defined a debt-for-equity conversion as the technique whereby a country permits the holder of a hard-currency-denominated claim against a given country to exchange the claim in the secondary market for Third World debt. The holder exchanges the claim for cash or liability of the same obligor that is denominated in the local currency, and then uses the cash, or sells that liability in the local financial market to raise cash, in order to make an equity investment in the host-debtor country. A debt-for-equity conversion includes the exchange, not only of a sovereign debt, but also of a private sector debt claim for equity in private local enterprises, in companies targeted for privatization programs, or even in public enterprises. *See* Maktouf, *Some Reflections on Debt-for-Equity Conversions,* 23 Int'l Law. 909, 909–10 (1989).

100. *See, e.g.*, N. Dytaquin & I. Sicat, Debt-to-Equity Conversion: The Philippine Experience (1988); R. Werrett, Guide to Debt-Equity Swapping in Key Latin American Countries (1987); de Abreu, *Peru's Debt Equity Conversion Guidelines,* Int'l Fin. L. Rev., Sept. 1988, at 36; Paz & Tecson, *Argentina's Debt to Equity Conversion Program,* J. World Trade, Oct. 1988, at 81; Tavares, *Brazil's Debt to Equity Swap Program,* 23 Int'l Law. 533 (1989); Tucker, *Debt-for-Equity Swaps in Mexico,* 23 Tex. J. Int'l L. 443 (1988).

101. *See* de Vries, *Foreign Direct Investment in Heavily Indebted Developing Countries: A View from the Financial Community,* in Foreign Direct Investment in the 1990s: A New Climate in the Third World 85 (C. Wallace ed. 1990). When the government of Chile employed debt conversion for example, the levels of FDI flows to that country increased eightfold in the space of five years, from $70 million in 1983 to about $600 million in 1988. *Id.* at 100. Mexico, always a pacesetter in Third World development issues, recently liberalized its investment regulations to allow for a debt-swap program to promote foreign investment in projects related to the creation of national infrastructure and the sale of assets of the public sector. *See Program of Exchange of Public Debt for Investment, published in* Official Gazette of the Federation, Mar. 30, 1990.

debt-equity swaps, which results in the conversion of a developing country's debt into foreign equity in a domestic firm; and so-called debt-peso swaps, in which the conversion of the developing country's debt into local currency liabilities involves a national of the debtor country instead of a foreign investor.[102] These debt swaps have become proven instruments to attract foreign investments and should have been included in the Code.

a. Debt-Equity Conversions

Debt-for-equity swaps, for instance, can be used in the privatization of public enterprises, that is, debt in exchange for equity shares in, or assets of, those companies. State intervention in the Cameroon economy has always been pervasive, a fact acknowledged by President Biya in his 1991 New Year's Day Address to the Nation when he said: "The past thirty years have highlighted the shortcomings of an economic policy based on the omnipresence of the State."[103] At one point the government through its holding company, the Société nationale d'investissements, held equity interests in about sixty companies.[104] Under the structural adjustment program, however, the government has "begun to reduce the role of the parastatals in the economy by forcing some into liquidation, drawing up privatization plans for others, and limiting the role of most of the rest."[105] The government has finally realized that it is not equipped to play the role of entrepreneur and that that role is better played by the private sector.[106] To the extent that the 1990 Code is designed to serve as an instrument of economic policy, it should have been drafted to allow for the exchange of a portion of the country's $4.5 billion foreign debt and its service obligations for equity shares in, or assets of, state-owned firms being privatized. Alternatively, external debt could be exchanged for more attractive debt instruments such as debt swaps for collateralized bonds.

One assumes that reduction of Cameroon's foreign debt to levels compatible with required growth rates remains a priority in the government's strategy to

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102. *See* GROUP OF THIRTY, FINANCE FOR DEVELOPING COUNTRIES 18–19 (1987) [hereinafter FINANCE].

103. *See* Biya, *supra* note 2, at 4.

104. *See* U.S. AGENCY FOR INT'L DEV., CRITICAL ISSUES FOR AMERICAN INVESTORS IN CAMEROON 9 (1990) [hereinafter USAID Publication]. The government also has shares in another 150 enterprises. Windfall oil revenues in the 1980s provided the government with the funds to subsidize these inefficiently run public enterprises. In 1984, for example, government subsidies to these parastatals amounted to CFA 150 billion, which is approximately 50 percent of oil revenue that year and 18 percent of total government expenditures. *See* U.S. STATE DEP'T, BACKGROUND REPORT ON CAMEROON'S ECONOMY 2 (1991).

105. USAID Publication, *supra* note 104, at 9.

106. In an interview with Jeune Afrique Économie, Cameroon's Minister of Industrial Development and Commerce, Rene Owona, emphasized this point:

> The administration should no longer be playing the role of guide in economic matters because it plays it badly. The idea of putting up big projects that only begin to earn profits in 10 or 15 years is over. Hereafter projects will be set up in the free trade zone with the goal of earning profits in the fastest time possible. The administration must adapt its whole institutional apparatus to this new truth, to this new reality.

Zones Franches, JEUNE AFRIQUE ÉCONOMIE, no. 140, Février 1991, at 229, 232, cols. 1-2 (author's translation).

contain the economic crisis. Therefore, debt conversion programs could be enlisted to achieve this objective. The experience of countries that have used debt-for-equity swaps in the past suggests that foreign investors look favorably on such programs as an inexpensive financial alternative for obtaining capital at a discount.[107] This mode of raising capital contributes significantly in lowering the start-up costs of the business ventures the investors were planning to undertake in the host country. More importantly, lower start-up costs "may well entice foreign investors to undertake ventures that would not otherwise have launched, or to undertake them sooner or on a larger scale."[108]

A major adverse effect of debt conversion is its potentially inflationary impact, especially in situations where debt eligible for conversion is large relative to the domestic money supply.[109] To reduce the domestic inflationary pressures that large-scale debt swaps are likely to cause to the local economy, their use in

107. *See* de Vries, *supra* note 101, at 95.

108. *Id.* at 96.

109. Additional drawbacks with debt conversion schemes include their contribution to an unwanted and undesirable capital flight through so-called "round tripping." Round tripping occurs when hard currency is used to purchase local currency at a deep discount through debt conversion, then the local currency is used to repurchase hard currency at a more favorable rate in the local foreign exchange market. The investor subsequently repatriates the newly acquired currency to his home country. *See* Ajayi, Debt Conversion Programme in Nigeria, Paper Presented at a Senior Level Debt Conversion Workshop at the African Development Bank, Abidjan, Côte d'Ivoire 5 (Feb. 9–11, 1989). For countries like Cameroon, whose currency is easily convertible into French francs and where there are no restrictions on transfer within the Franc zone, "round tripping" poses a serious problem unless a country implements adequate controls to limit speculation. *See* Mondeil, Summary of Interventions, Paper Presented at a Senior Level Debt Conversion Workshop at the African Development Bank, Abidjan, Côte d'Ivoire 10 (Feb. 9–11, 1989).

Another problem raised by conversion programs is the possibility of changing the structure of business ownership through loss of control over the economy to foreigners. This problem tends to arise in debt-equity swaps which allow foreigners to exchange debt notes for equity shares in state-run enterprises. In the case of Cameroon, this issue is moot since the 1990 Code makes no distinction between foreign and domestic investors and does not place any restrictions on equity ownership. Foreign, as well as domestic, investors are free to invest in any sector of the economy without regard to a predetermined ownership formula. Finally, debt conversions also raise the problem of additionality of resources. This problem arises because investment that enters under a debt swap scheme is not "new capital," but merely a substitute for FDI that would have entered whether or not there was a conversion scheme in operation.

Notwithstanding these drawbacks of debt conversions, the experience of countries like Nigeria and Zambia suggest that the benefits far outweigh the potential costs or negative impacts of their programs. *See* Ajayi, *supra;* Valianti, Zambia Case Studies: Gwembe Valley Development Company and Masstock (Int'l Ltd.), Paper Presented at a Senior Level Debt Conversion Workshop at the African Development Bank, Abidjan, Côte d'Ivoire, (Feb. 9-11, 1989).

Conversions, especially debt-equity and debt-peso swaps, can also cause a misallocation of resources in two ways. First, their reliance on preferential exchange rates distorts trade and wastes foreign exchange and, in extreme cases, gives rise to new capital flight. Second, this misallocation is reflected in their tendency to deplete the proceeds of capital inflows, such as foreign equity investment or returning flight capital, to repay external debt to the exclusion of other important uses, such as to pay for imports. *See* FINANCE, *supra* note 102, at 16–17, 33–35. This evidence suggests that countries must structure debt conversion programs so that programs include adequate safeguards to counteract these potential drawbacks.

Cameroon could be restricted to projects normally financed with public funds, such as infrastructure: roads, housing, energy and water supplying systems, and any other services that the minister in charge of industry may consider as infrastructure.[110] Because these are usually public-funded projects, the amount of local currency in circulation would not be increased if they were eventually financed by converting the public debt.

b. Debt Conversions and Flight Capital

Debt conversion programs in the form of debt-peso swaps could also be used as an incentive to encourage the repatriation of flight capital, much of which is illegally taken out of the country and deposited in foreign banks. The problem of illicit capital flight is one that continues to plague developing countries. In the thirty years since Cameroon became independent, it is alleged that an estimated 1,610 billion CFAF,[111] approximately $5,313 million, have been embezzled by public officials and stashed away in European banks. Of this amount, 650 billion CFAF ($2,145 million), left the country between 1986 and 1990.[112] This amount is about one-half Cameroon's total external debt[113] or equal to a year's export receipts![114] One way to lure back flight capital would be to adopt debt-peso—debt-franc in the Cameroon case—programs similar to those initiated by the governments of the Philippines, Chile, and Mexico, which would allow nationals to buy their own country's debt in the secondary markets using their funds abroad or foreign currency acquired in the parallel market.[115] Such a program of conversion would allow eligible Cameroonians to exchange their cash for negotiable debt instruments such as discount bonds, par bonds, and warrants fully backed by the government—which they could then present to the central bank or the Ministry of Finance for redemption. Government authorization would, of course, be a necessary condition for launching a debt-franc program. One potential problem is that the bulk of Cameroon's external debt, over 80 percent, is owed to national governments and multilateral development agencies. Since less than 20 percent is owed to private commercial institutions, there is some question

110. For instance, Free Zone Regime, *supra* note 5, art. 3(g) defines infrastructure to mean "a physical structure (such as fences, roads, bridges, or storm sewers) which facilitates economic or other activity or protects property."

111. 1 billion CFAF is equivalent to $3.3 million.

112. *See Probe the Alleged Embezzlers,* Cameroon Post, Aug. 8–15, 1990, at 1; *Qu'est-ce qui ne va pas dans le système Biya,* Int'l News Hebdo, Jan. 8, 1990, at 4–6. For an academic perspective on fraud and corruption in Cameroon, see P.-J. TEDGA, ENTERPRISES PUBLIQUES, ÉTAT ET CRISE AU CAMEROON: FAILLITE D'UN SYSTÈME 246–56 (1990).

113. While appearing before the National Assembly in December 1990, Cameroon's Minister of Finance acknowledged the gravity of the problem of illicit capital. *See Peut-on repatrier nos capitaux?,* Cameroon Tribune, 10 Dec. 1990, at 1; *see also Qu'est-ce qui fait fuir nos capitaux?, id.* at 6.

114. Export receipts for the last five years have averaged about 587 billion CFAF or $1,937.1 million, that is, about 63 billion CFAF or $207.9 million less than the amount of public funds allegedly embezzled during the same period.

115. *See* FINANCE, *supra* note 102, at 24.

whether these national governments would be interested in discounting the face value of their debt for sale in the secondary market. In any event, if any of these external creditors, sovereign or private commercial, were willing to reduce its exposure through debt swaps, then the Cameroon Government should not oppose the move.

A second requirement for a debt-franc program is the willingness of the government to declare a general amnesty for nationals who have taken funds out of the country and are prepared to bring back the money. The amnesty program must include a provision that the source of these funds or the means by which the nationals got them out of the country will not be questioned. Finally, the government must agree to allow participants in the debt-franc swap to keep any untaxed income their assets may have earned abroad.[116]

A debt-franc program offers enormous advantages to all parties. For the government, it would immediately free up funds that could be used to repay a portion of its huge external liabilities.[117] The average citizen also would stand to gain from this program. One of the government's priority economic objectives is the development of indigenous entrepreneurship. If the proceeds of debt-franc conversion were invested in infrastructure projects and in the divestiture of the assets of the public sector, these moves would likely create employment opportunities for the thousands of unemployed citizens. Properly structured debt-franc swaps could become an effective tool for spurring the growth of a new group of domestic investors—nationals with substantial funds locked up in foreign safe deposit boxes who might otherwise be reluctant to repatriate the funds for fear of being prosecuted.

2. *Employment Generation*

Cameroon's population growth exceeds 3 percent per year, thereby adding 300,000 to 400,000 people annually to a population base of approximately twelve million.[118] And while an estimated 158,000 workers[119] enter the labor market each year, only 23,000 new jobs are created annually.[120] Official statistics place the national unemployment rate at 15-20 percent, although unofficial es-

116. *Id.*

117. In fiscal year 1989–90 alone, Cameroon earmarked a total of 55 billion CFAF for debt amortization, 43 billion CFAF for interest payments, and 12 billion CFAF for principal repayments. If as much as 75 percent of the estimated 650 billion CFAF that left Cameroon illegally in the last five years were repatriated through the debt-franc program, that amount would be sufficient to cover the country's debt service obligations for the next several years, *ceteris paribus*. And if Cameroon recovered only 50 percent of these allegedly stolen assets and applied them to the external debt, it would be reduced by about 22 percent.

118. *See* Sixth Plan, *supra* note 10, at 3–5.

119. *Id.* para. 23.3.1, at 278–79. At the beginning of the Fifth Plan (1981–1986), the working population was estimated at 3.4 million, but by the end of the Plan it had increased to an estimated 4 million. The working population is very young, with almost one-third below the age of twenty-five years. *Id.* at 275.

120. *Id.* at 275–77.

timates go as high as 30 percent.[121] In the urban centers of Douala and Yaounde, the unemployment rate is estimated at 30 to 50 percent and underemployment is even higher. Adding to the unemployment crisis is the underemployment problem. Cameroon has a literacy rate of 68 percent (which is among the highest in Africa) and a national university system that dumps annually hundreds of degree-holders into the labor market[122]—a majority of whom remain un- or underemployed for long periods of time. Each year there are a lot more Cameroonians looking for employment than there are jobs. Not surprisingly, employment generation features prominently in the government's long-term development objectives, and a sincere effort has been made to include in the Code a strategy for achieving this goal.

The 1990 Code tackles the problems of high population growth and insufficient jobs by linking investment incentives to job creation opportunities offered and by imposing quantitative employment minima that must be met for investments to enjoy benefits under the Code. Clearly the 1990 Code is an improvement over the 1984 Code and its rather vague provisions on job creation.[123] But the 1990 Code does not really address the issue of underemployment of high-school and university graduates. One would like to see some language in the Code that conditions access to incentives in the investment regime not only on the investment's employment-creation capacity but also on its readiness to upgrade labor and management skills.

At present, nothing prevents an investor with preferential access to benefits under the Code from meeting its job creation obligations by recruiting unskilled or semiskilled Cameroonian labor while reserving its managerial and technical positions for expatriate staff.[124] Given the relative ease with which foreign personnel can now enter the country,[125] their recruitment remains an attractive option for any foreign investor. While the focus of the 1990 code is clearly on employment creation, a parallel emphasis should have been placed on raising the qualifications or skills of the labor force.

The AUTOCAM, S.A. example can illustrate the flaws in the Code's job-creating provisions. Assume that the joint venture applies for and is subsequently placed under the Strategic Enterprises Schedule, which requires the creation of at least one job for every 20 million CFAF of investments made. With an investment of 8,500 million CFAF, AUTOCAM, S.A. thus will be expected to

121. *See* USAID Publication, *supra* note 104, at 21.

122. Based on estimates in the Sixth Plan, about 24,000 graduates entered the job market between 1987 and 1991, 20,000 of whom received training at the University of Yaounde and at the Buea, Douala, Dschang, and Ngaoundere University Centres. *See* Sixth Plan, *supra* note 10, at 220.

123. The old Code talked of "undertakings . . . which use large numbers of skilled local manpower" without actually attempting to define what "large numbers" meant. *See* 1984 Code, *supra* note 19, §§ 22, 24.

124. A fact noted by the drafters of the Sixth Plan. *See* Sixth Plan, *supra* note 10, para. 23.1.7, at 277.

125. 1990 Code, *supra* note 6, art. 7.

generate 200 new jobs. As a Strategic Enterprises undertaking, AUTOCAM, S.A. will have an initial five years for its start-up, which can be extended to two more years and, in exceptional circumstances, another two years[126] for a total of nine years. Benefits under the preferential regime become available when the AUTOCAM, S.A. reaches its operational phase,[127] and they run for twelve years.[128] AUTOCAM, S.A., a company that is 87.5 percent owned by a French company, can remain in Cameroon for a total of twenty-one years. Its profits, dividends, royalties, and other benefits will be protected under the 1990 Code and, in return, all that it has to do is create 200 permanent jobs. Since nothing in the Code prevents it, AUTOCAM could choose to recruit its technical and managerial staff from France and leave the unskilled and semiskilled jobs to the Cameroonian work force. On this point there is corroborative empirical evidence. A 1990 survey of the general business climate in Cameroon undertaken for the United States Agency for International Development found that foreign firms were more likely to employ expatriates in management positions than were Cameroonian-owned businesses.[129] Of the firms surveyed, roughly 60 percent of management personnel in foreign-owned firms was foreign and only 27 percent of the top decisionmakers in these firms were nationals.[130] The 1990 Code does not provide a solution to this problem, which is regrettable, especially when viewed in light of the many unemployed university graduates walking the streets of Douala and Yaounde.

In order to promote the employment and training of local workers in management and technical positions,[131] the Code should require a progressive scale for recruiting this category of workers and for gradually increasing the percentage of Cameroonian employees. For example, it should include language to the effect that a foreign investment project admitted into any of the preferential regimes shall, in general, offer no less than, say, 40 percent of its managerial and

126. *Id.* art. 34.
127. *Id.* art. 36(1).
128. *Id.* art. 30.
129. *See* Private Sector Study, *supra* note 36, at 10.
130. *Id.* In a study of expatriate-run brewing firms in Nigeria, Dr. Akpakpan attempted to gauge the extent the transfer of brewing technology had contributed to the development of local capability in modern brewing. Dr. Akpakpan gathered data on the training of indigenous management personnel, the emergence of capable indigenous personnel, the decline in the number of foreign managerial personnel, and the assumption of key decision-making responsibilities by Nigerian nationals. Akpakpan found that in certain aspects of the business such as personnel, marketing, and public relations, the majority of these foreign-operated breweries had successfully transferred management responsibilities to their local employees. This was not the case, however, with respect to technological control, engineering, and technical matters which expatriate managers handled almost exclusively. *See* Akpakpan, *Acquisition of Foreign Technology: A Case Study of Modern Brewing in Nigeria*, 17 DEV. & CHANGE 659, 668 (1986).
131. *See* USAID Publication, *supra* note 104, at 21; *see also* Private Sector Study, *supra* note 36, at 20.

technical level jobs to Cameroonian nationals during the project's start-up phase and no less than 80 percent when the enterprise becomes fully operational. This type of provision recognizes that the lack of local skills development in the country can limit the number of nationals in high managerial positions in the initial phase of an investment project, but that this situation is to be corrected through training over time. In addition, the proposed provision parallels a similar provision in the more innovative Free Zone Regime, which requires that by the end of the fifth year of a free zone enterprise's operations the number of foreign employees not exceed 20 percent of the overall workforce.[132]

3. *Export Promotion*

While Cameroon, in comparison with other sub-Saharan African countries, has a diverse and well-developed industrial base,[133] the economy remains heavily dependent on commodity exports. The manufacturing sector is still dominated by the processing of raw materials and by the assembly of imported raw materials and components geared mainly to the local market. Manufacturing as a share of exports has averaged 11 percent between 1985 and 1990.[134] Understandably, the government wants to reduce this dependence on commodity exports.[135] Towards this end, the 1990 Code defines a policy of export promotion that encourages a shift away from the production of consumer goods to the production of intermediate or capital goods for export.[136] Further, the Code articulates a policy of broadening and diversifying the country's production and export base into higher value-added activities.[137]

The success of the export promotion policy hinges on a number of factors, some of which are outside the government's control. One such factor is the exchange rate. Economists contend that an inappropriate exchange rate tends to generate cost-price distortions that impact negatively on consumption and investment as well as on the balance of trade. The profitability of export-oriented and import-competing activities in the country decline over time when the exchange rate is off-balance.[138] Cameroon's exchange rate seems to be in

132. Free Zone Regime, *supra* note 5, art. 21(a)(3).

133. *See, e.g.*, E. HODGKINSON, *supra* note 11, at 321.

134. *See* USAID Publication, *supra* note 104, at 46, table 15.

135. This dependence on commodity exports has had severe implications not only for Cameroon's balance of payments, but also for its fiscal situation, its monetary and financial system, and national income. *See id.* 52.

136. 1990 Code, *supra* note 6, arts. 10, 11.

137. *Id.* art. 28(1)(a)-(b).

138. *See* Zulu & Nsouli, *Adjustment Programs in Africa: The Experience with Fund-supported Programs, 1980–81*, 21 FIN. & DEV. 5, 6–7 (1984). A 1990 survey of foreign and private domestic enterprises in the country found the regulatory environment, in general, and the exchange rate policy, in particular, to be the single most serious obstacle to export promotion. *See* Private Sector Study, *supra* note 36, at 16, 24–27.

such a state of imbalance in that it overvalues the CFA franc by about 30 to 50 percent.[139]

An overvalued exchange rate does not contribute to the creation of a competitive environment conducive to private investment and export promotion strategy; overvaluation tends to lower the costs of imports by operating both as a tax on exports and as a subsidy on imports.[140] The overvalued CFA franc means that Cameroonian exports are indirectly "taxed" 30 to 50 percent, which tends to discourage export activities while encouraging foreign, including illegal, imports from neighbors like Nigeria.[141] The high cost of the CFA franc in relation to the Nigerian naira places made-in-Cameroon products at a severe competitive disadvantage vis-à-vis comparable products from Nigeria. Over time a shift in competitiveness away from Cameroon to other countries outside the Franc Zone seems likely.[142] Thus, a devaluation to put the exchange rate into equilibrium appears to be a necessary predicate to the success of the 1990 Code's policy of export promotion. A devaluation should raise the costs of imports and make local products more affordable;[143] at the same time it should generate jobs for Cameroonians in the export promotion sector of the economy.

For a number of reasons, the Cameroon Government has not been eager to pursue this policy option. Some have attributed the government's reluctance to adjust its exchange rate, in response to the current macroeconomic crisis, to its membership in the Franc Zone.[144] Zone membership has its privileges, but it also imposes some constraints on members' ability to adjust quickly and decisively to

139. *See* USAID Publication, *supra* note 104, at 49. Representatives of local and foreign businesses interviewed complained that Cameroon's overvalued exchange rate makes it difficult for their firms to compete abroad. This view was widespread and uniformly held by foreign-owned and Cameroonian firms of every size category and sector. *Id.*; *see also* Private Sector Study, *supra* note 36, at 27. Others argue that the overvaluation of the CFA franc has been slight vis-à-vis other African currencies. *See African Monetary Unions, supra* note 83, at 574.

140. *See* USAID Publication, *supra* note 104, at 49. *See also* Lessard & Hansen, *Host-Government Regulations and Incentives for Foreign Direct Investment*, in 1 NEGOTIATING FOREIGN INVESTMENTS: A MANUAL FOR THE THIRD WORLD 3.1B 1, 3.1B 10 (R. Hellawell & D. Wallace, Jr. eds. 1982).

141. *Id.* at 49.

142. *Id.* Disturbing signs of disinvestment already are appearing on the horizon as foreign export-oriented firms are transferring their investments to countries outside the Franc Zone. *Id.*

143. The benefits of devaluation must be balanced against its disadvantages. Some commentators argue that far from improving competitiveness, devaluation is more likely to lead to a "stagflationary downward spiral." *See* T. PARFITT & S. RILEY, THE AFRICAN DEBT CRISIS 41 (1989). Proponents of this view note when countries have imposed devaluations they have predictably resulted in massive domestic price inflation followed by declining agricultural and industrial output. The reason for this is the fact that "much of agriculture and industry is dependent on imported inputs such as petroleum, machinery, tools, and fertilizers, devaluation [almost invariably] raises the cost of these imports to local producers, who will consequently tend to raise their prices rather than take a substantial cut in profits." *Id.* A country can, of course, protect the gains from devaluation if devaluation is accompanied by a policy of budgetary restraint requiring reductions in government spending plus massive infusions of foreign capital. *See* Gulhati, Bose & Atukorala, *Exchange Rate Policies in Africa: How Valid Is the Skepticism?* 17 DEV. & CHANGE 399, 410 (1986).

144. *See* Devarajan & deMelo, *supra* note 83, at 449.

macroeconomic imbalances such as the sustained period of real exchange rate appreciation observed in Cameroon and other Franc Zone countries.[145] One of the conditions of zone membership is that any change in the fixed exchange rate requires the agreement of all the union members.[146] Therefore, devaluation as an option is not available to the Cameroon Government since it does not appear that the other members in the monetary union are in favor of such a move.[147]

The government also has not actively pursued devaluation because Cameroon's multilateral creditors have not made this action a condition for the extension of loans. Unlike the typical structural adjustment and stabilization programs worked out between the IMF, the World Bank, and a developing country government, the program with Cameroon does not impose a requirement to devaluate the exchange rate.[148] As a consequence, the government has elected to pursue alternative policy options with the stated goal of improving competitiveness, both in the domestic and export markets.[149]

Aside from the exchange rate, the success of the Code's export promotion strategy will depend on two other factors: the nature of exports, and the buoyancy of the market for Cameroon products in the industrialized countries. With respect to the first factor, it has been shown that products with relatively high price elasticities stand the best chance of finding a ready market in the consumer countries; but the absorptive capacity of these markets is heavily dependent on the rate of growth posted by their own economies.[150] Put differently, the economic health, measured in growth rates, of Cameroon's traditional trading partners holds the key to the success or failure of the government's export promotion program. A drop in growth rates well below the 3 percent threshold necessary to

145. *Id.* A competing view holds that within the limits set by the rules of the Franc Zone, member countries still have a lot of room to maneuver and enjoy a large degree of autonomy in the choice of economic policy tools at their disposal. These choices for combatting the crises in their economies include a commercial policy, the degree of public sector and state intervention, wage and price policy, external borrowing and so on. *See African Monetary Unions, supra* note 83, at 575; Devarajan & deMelo, *supra* note 83, at 448.

146. *See supra* note 83 and accompanying text.

147. *See* USAID Publication, *supra* note 104, at 48–49. The educated guess is that some devaluation is inevitable. Come 1992, when the European currencies move toward a common currency, the CFA franc will be pegged against that common currency. *Id.* Jacques Pelletier, French Minister of Cooperation and Development, has even gone as far as predicting the demise of the CFA franc, which he foresees as the first casualty resulting from the eventual integration of the currencies of the European Economic Community member countries. *See Currency Demise*, W. AFR., Apr. 15–21, 1991, at 565, col. 3.

148. Typically, the IMF and World Bank have conditioned the participation of African countries experiencing severe balance-of-payments problems in their structural adjustment programs on four key factors: (1) a substantial devaluation of the domestic currency; (2) reduction of public sector borrowing by requiring a cut in government spending; (3) an increase in interest rates as a means of raising domestic savings; and (4) a reduction in the money supply. *See* Singh, *Tanzania and the IMF: The Analytics of Alternative Adjustment Programmes*, 17 DEV. & CHANGE 425 (1986).

149. The linchpin in Cameroon's stabilization, adjustment and economic recovery program is the reduction of government expenditure. *See supra* note 3 and accompanying text.

150. T. PARFITT & S. RILEY, *supra* note 143, at 44–47.

maintain a healthy market for Third World products in the industrialized countries[151] will cause serious trouble for Cameroon's export promotion efforts. Unfortunately, this aspect of North-South economic relations is one over which developing countries like Cameroon have little or no control.[152]

4. *Linkage Between Raw Material Base and Manufacturing*

One of the stated objectives of the 1990 Code is to encourage the use of domestic raw materials and components by firms admitted into one of its preferential regimes. National value added ratios of 25-50 percent are required for enterprises admitted into the Basic and Strategic Undertakings schedules, respectively. [153] Enterprises that promote the valorization of Cameroon's natural resources are guaranteed a wide range of incentives under the Code including, among other things, total exemption from all customs duties and taxes on the purchase of country-source raw materials or nontradeable public sector services such as electricity and water supply. Purchases of intermediary products of local origin that are used in whole or in part for the production of finished or processed products also qualify for the complete exemption from duties and taxes.[154]

The rationale for these benefits to foreign investors rests on a pair of optimistic beliefs: the income from local supplies of tradeable and nontradeable production inputs to these enterprises will be significant enough to boost the country's foreign exchange earnings; and the valorization of Cameroon's natural resources will, in the long run, create economic backward linkages between the foreign enterprise and local industries. Available empirical evidence offers little to encourage these expectations. Studies have shown that the wages and salaries paid to employees in these enterprises will account for the major share of domestic value added in the total manufacturing value added.[155] Thus, the aggregate wage bill will depend on the number of jobs created by the enterprise and the wage level. If all or most of the job opportunities are for unskilled or semiskilled workers, with wages in the lower end of the labor scale, then the income gen-

151. *Id.*

152. On one level the economies of the developing and developed countries are symbiotically linked, but on another level the relationship takes on a dialectical character. Former President Nyerere has provided one of the clearest expositions of this duality in North-South relations in an address he delivered at the Institute of Social Studies at The Hague in 1985. What he said then holds true today:

> [T]he Third World, Africa and Tanzania are exporters of primary commodities; the developed countries are exporters of ever more sophisticated manufactured and capital goods. But our exports are your imports, and our imports are your exports; when you buy less of our primary commodities, or pay less for them, we in turn have a reduced capacity to buy what you produce. The result is deprivation in Africa and unemployment in the developed world.
>
> [But] the comparative prices of primary commodities and manufactured goods are fixed in America and Europe. Every morning, I listen to the BBC to learn the price of cotton and coffee with which Tanzania earns its foreign exchange. The prices of the tractors and other goods we need to buy are not announced; they are fixed by manufacturers in the developed world, and we learn what they are when we go to buy.

See An Address by Julius K. Nyerere, 17 DEV. & CHANGE 387, 388 (1986).

153. 1990 Code, *supra* note 6, arts. 20(1)(c), 28(1)(b).

154. *Id.* arts. 12–14.

155. U.N. COMM'N TRADE DEV., EXPORT PROCESSING FREE ZONES IN DEVELOPING COUNTRIES: IMPLICATIONS FOR TRADE AND INDUSTRIALIZATION POLICIES 20, U.N. Doc. TD/B/C.2/211/Rev.1, U.N. Sales No. GE.85-51854 (1985) [hereinafter UNCTAD Study].

erated cannot be expected to contribute significantly to Cameroon's foreign exchange earnings. Also, the Code guarantees to investment undertakings the right to hire and fire freely subject to the labor and social legislation in force.[156] Armed with what amounts to a *carte blanche*, any shrewd foreign investor company can take advantage of the labor surplus situation in the country to meet its job creation obligations under the Code by paying only minimum wages.

As to the creation of economic backward linkages, two factors are critical: (1) the strength of supply relationships between local businesses and foreign enterprises, and (2) the availability of factor inputs as world market levels of price and quality. In Cameroon, as in the majority of developing countries, backward linkages between foreign-based firms and the national economy are not well established, in part because of the vertical integration of most foreign operations into a transnational production process.[157] As a result, these operations depend heavily on intra-firm imports of supplies.[158] This pattern of networking between foreign-based firms in Cameroon and their worldwide operations is not likely to alter significantly in Cameroon during the life of the current investment law. The Code guarantees the right of foreign companies to set their own prices and their production, distribution, and marketing policies.[159]

Even if foreign companies are willing to bypass this structure of production in order to link up with local firms, local suppliers lack the technical and marketing expertise to produce the quality and quantity of goods necessary to meet international standards. Furthermore, if the available raw materials and intermediate goods are generally of inferior quality and too expensive, then the share of domestic value added in total manufacturing value added will be negligible.[160] Income generated from payments for nontradeable components of value added,

156. 1990 Code, *supra* note 6, art. 6. A new Labor Code is currently being drafted. *See* Biya, *supra* note 2, at 4. It is expected that the more liberal labor provisions in the Free Zone Regime will most likely serve as the model for the expected reforms to be implemented under the general Labor Code. *See* USAID Publication, *supra* note 104, at 71. Enterprises placed under the Free Zone Regime are exonerated from the standard wage classification scheme specified under the Labor Code and may set wages on the basis of productivity and efficiency. Free Zone Regime, *supra* note 5, art. 21(a)(1). Free Zone enterprises have the right to freely negotiate contracts with their employees and to replace the restrictive and bureaucratic procedures of hiring and firing with a system agreed upon between Free Zone employers and employees, as developed during their collective bargaining. *Id.* art. 21(a)(2).

157. The Private Sector Study commissioned by USAID confirms this lack of networking opportunities between the large foreign firms and the smaller Cameroonian-run firms. Its authors blame the legal and regulatory environment for "restrict[ing] the willingness of the older, more established firms to develop marketing and production relationships with smaller, newer entrepreneurs." The study is optimistic about the prospects of "[g]reater linkages between smaller and larger, more sophisticated firms [that] can . . . help foster transfer of technology and management skills." *See* Private Sector Study, *supra* note 36, at 28.

158. USAID Publication, *supra* note 104, at 71.

159. 1990 Code, *supra* note 6, art. 5.

160. According to the Private Sector Study, a survey found that on average between 34-51 percent of inputs used by firms in Cameroon are imported with the larger foreign-owned firms more likely to use imported inputs than the smaller locally owned businesses. *See* Private Sector Study, *supra* note 36, at 11.

which include public sector services like electricity and water supply and private sector services such as transportation, packaging, services for equipment maintenance, legal and accounting services, and security tend generally to be below 25 percent of domestic value added.[161] Against this background it is doubtful whether the domestic value added ratios targeted in the 1990 Code are realistic and attainable.

5. *Technology Transfer*

One stated purpose of the 1990 Code is to encourage the transfer and adoption of appropriate technologies[162] in the belief that their entry will increase the country's technological capacity. Yet the Code fails to specify any requirements for the admission of imported technology. The history of technology transfer from the industrialized countries to the Third World has not engendered much trust between supplier and recipient. Many in these host countries view imported foreign technology as a Trojan horse that must not be left unguarded. This view is echoed in a 1984 Annual Report of the Nigerian National Office of Industrial Property (NOIP):

> It may be noted that prior to the existence of the office, technology was being sold at exorbitant prices . . . . [I]nvariably our industries became pawns in the hands of foreign partners as huge sums were syphoned out as payments for plants, machinery, technical/management and industrial property rights thereby making the country industrially and technologically overdependent on foreign interests.[163]

To ensure that Nigeria would not remain forever dependent on foreign technology, the government, through the NOIP, established a framework for regulating technology transfers. Under the NOIP guidelines, the use of foreign brand names for internal sales is proscribed. So too is

> the use of foreign consultancy services during the execution of a project, the employment of foreign technology for low local value-added operations, minimum guaranteed royalties, long-term license agreements up to 10 years unless it can be demonstrated to the satisfaction of NOIP that a minimum level of exports of 30 percent of production will be achieved during the contracted term of the license, and agreements which require the consent of the licensor before the transferee can modify products, processes or plants.[164]

Whether one agrees with these guidelines or not, they at least reaffirm a government's right to monitor and control the transfer of technology. It is the

161. *See* UNCTAD Study, *supra* note 155, at 21.

162. 1990 Code, *supra* note 6, art. 1(2).

163. *See* Short, Investment Incentives and Regulatory Environment in Nigeria (1987) (report for World Bank), *cited in* K. Marsden & T. Belot, Promotion of Foreign Direct Investment in Africa 21 (May 1987) (paper prepared for the International Finance Corporation) [hereinafter Marsden & Belot]. *See also* Akpakpan, *supra* note 130, at 660; Vaitos, *The Process of Commercialization of Technology in the Andean Pact*, in FIRMS AND MODERN IMPERIALISM 210 (H. Radice ed. 1971); U.N. COMM'N TRADE DEV., MAJOR ISSUES ARISING FROM THE TRANSFER OF TECHNOLOGY IN DEVELOPING COUNTRIES (1975).

164. Marsden & Belot, *supra* note 163, at 21.

acknowledgment and exercise of this right that is so glaringly absent in the Cameroon Code. Furthermore, this omission goes against the trend of including a provision in investment codes to regulate technology transfer contracts likely to be concluded between foreign investor and host government.[165] For instance, the technology transfer provisions of the Andean Foreign Investment Code require all contracts for the importation of technology or the licensing of patents and trademarks to be examined by a competent national authority.[166] A contract will be evaluated with regard to the "actual contribution of the imported technology by estimating its probable profits, the price of the goods which incorporate the technology or other specific forms of the effect of the imported technology."[167] Contracts that contain tie-in clauses that obligate the host country purchaser to obtain capital goods, intermediate products, and other technologies from the foreign supplier, or tie-out clauses that require the licensee to refrain from the use of competitive technologies are specifically prohibited under the Andean Code.[168]

The idea that countries that are, relatively speaking, technologically deprived need to impose some conditions on the admission of foreign technology may at first strike one as absurd. After all, countries in desperate need of advanced technology cannot, in theory, afford to dictate the terms under which technology should be transferred from their owners to them. The need for restrictions can, however, be justified on the ground that technology-starved countries run the risk of becoming totally dependent on foreign technology without clear guidelines on its admission. It is to the interest of the developing countries that the technology transferred contributes to developing local technological capacity, that is, knowledge, information, and skilled manpower. As Wionczek points out, the task of building up domestic technological capacity cannot be left to market forces and private enterprises because their:

> objectives and needs differ considerably from the societal objectives of an underdeveloped industrializing country. Building such a capacity involves the ability of the state to design proper R&D long term policies aimed at eliminating strong discontinuities

165. *See, e.g.*, Investment Code of Ghana, P.N.D.C. Law 116 of 13 July 1985, part V *reprinted in* 3 INVESTMENT LAWS OF THE WORLD: GHANA (ICSID) 11 (May 1987) (All technology transfer agreements must be approved by the Ghana Investments Centre); Law for the Control and Registration of the Transfer of Technology and the Use and Exploitation of Patents and Trademarks (Dec. 29, 1981), D.O., Jan. 11, 1982 (the Mexican technology transfer law) (the purpose of the law is to control and to direct the transfer of technology as well as to promote the areas pertaining to technology); Andean Foreign Investment Code, Decision 220 of the Commission of the Cartagena Agreement of May 11, 1987, art. 18, *reprinted in* 27 I.L.M. 974, 982 (1988) [hereinafter Andean Code]. Art. 18 provides:

> All agreements on the import of technology . . . must be examined and submitted for approval and registration . . . to the competent national entity of the respective Member Country, which must evaluate the actual contribution of the imported technology by estimating its probable profits, the price of the goods which incorporate the technology or other specific forms of quantification of the effect of the imported technology.

166. *See* Andean Code, *supra* note 165.

167. *Id.*

168. *Id.* art. 20(a), (d).

> between local educational systems, weak R&D production at academic institutions and the demand for technology patterns by its final users . . . .[169]

Foreign proprietors appear rather selective in their transmittal of know-how to developing country users.[170] Indeed, research shows that many foreign firms prefer to move the more labor-intensive stages of their production processes to Third World countries in response to labor-cost differentials between industrialized and third world countries.[171] On the other hand, the pre-assembly stages, which may require advanced technology, remain located in the industrialized countries.[172] For example, in semiconductor manufacturing, the two high-technology processes, mask-making and wafer fabrication, are typically undertaken in the industrialized home countries of the foreign investor.[173] And as the UNCTAD study notes: "[e]ven when mechanization may be less costly, firms prefer to utilize cheap and productive labour in developing countries in cases where the danger exists that the equipment will become obsolete before full depreciation owing to the speed of technological change and new product development."[174]

Cameroon's 1990 Code does not mention the kinds of protection, if any, foreign investors in Cameroon enjoy with respect to patents, trademarks, and other intellectual property rights. Should foreign investors expect the same treatment that Cameroon grants to its own nationals? Must patents and trademarks of foreign origin but intended to protect goods manufactured in the country be used in conjunction with a mark or patent registered in the national territory? How long may patents be registered and is the registration renewable? These are questions that an investor would hope to have clear answers to before embarking on a project of technology transfer. To be sure, the answers can be inferred from Cameroon's membership in the African Intellectual Property Organization (formerly called l'Union Africaine et Malagache (UAM)), which provides a complete regional system of registration and protection of intellectual property rights.[175] But one would not know this from perusing the 1990 Code. At the very least, the UAM regime could have been mentioned to alert prospective investors, or at best been incorporated by reference.

6.. *Efficacy of the Regulatory Framework for Investor-Led Development*

Under the 1984 Code, decisions regarding placement under one of the investment schedules were handled by the National Investments Commission or one of

169. *See* Wionczek, *Industrialization, Foreign Capital and Technology Transfer: The Mexican Experience 1930–85*, 17 DEV. & CHANGE 283, 293 (1986).
170. *See* Akpakpan, *supra* note 130, at 660–62.
171. *See* UNCTAD Study, *supra* note 155, at 17.
172. *Id.*
173. *Id.*
174. *Id.*
175. The other members are Benin, Chad, Central African Republic, Congo, Gabon, Côte d'Ivoire, Mauritania, Niger, Senegal, Togo, and Burkina Faso.

its subsidiary bodies. This organizational structure came under sharp attack for its heavyhandedness. As one report noted: "the screening and approval process was time-consuming and uncertain, with much discretionary intervention by the Cameroonian bureaucracy."[176] As a result of bureaucratic inertia, approvals took six months or longer.[177] A more recent study commissioned by the USAID mission in Cameroon corroborated this assessment.[178] The study revealed that firms of all sizes and operating in all sectors of the economy believed that the regulatory environment had had a negative effect on their past performance.[179] The uniform complaint coming from all business quarters was that government regulations made it difficult for investors to start and operate a business in the country, and even when operations started, the impact of the bothersome regulations continued to be felt. The study estimated that under the government regulations, it took anywhere from five to over twenty permits and licenses to begin operations and from six to twenty-four months to obtain them.[180] On average, medium-sized firms—those employing eleven to one hundred workers—had to have over twenty permits and licenses to begin operations, and it took the firms about twelve months to get these permits.[181]

The provisions governing admission into the special investment regimes do not go far enough in streamlining administrative procedures and allaying the fears of foreign investors. Article 24 of the 1990 Code is an ineffective attempt to introduce speed and flexibility into the approval process. The Code does away with the Commission structure and replaces it with a "*guichet unique*," a "special office to be set up according to modalities to be specified by regulations."[182] But leaving to bureaucrats the task of elaborating the regulations that will govern this "one-stop shop" introduces much uncertainty into the screening and approval process. Furthermore, it invites precisely the kind of discretionary intervention by the Cameroonian bureaucracy that under the old Code provoked so much investor backlash and may have led to some divestment by foreign enterprises. Pre-established rules and regulations are far more reassuring to an investor. Such rules tend to reduce the need to negotiate the terms of the investment agreement with bureaucrats, which in turn removes the opportunity for corruption in the process.

The dismantling of the National Investments Commission structure threw out the good with the bad. Implicit in that drafting decision was the belief that there was something inherently wrong in delegating the responsibility of vetting all foreign investment applications to a central authority. Yet the group that drafted

176. *See* USAID Publication, *supra* note 104, at 68.

177. *See* P.-J. TEDGA, *supra* note 112, at 178–80; *see also* Ouatedem, *Procèdures Administratives: Une Course d'Obstacles*, Cameroon Tribune, July 20, 1989.

178. *See* Private Sector Study, *supra* note 36, at 14.

179. *Id.*

180. *Id.* at 15.

181. *Id.*

182. 1990 Code, *supra* note 6, art. 24.

the more forward-looking Industrial Free Zone regime saw fit to centralize the screening and approval process.[183] This regime also provides for an approval process that is a model of administrative simplicity and clarity. Articles 4 and 5 create a National Office for Industrial Free Zones (NOIFZ) as the sole authority for reviewing and approving all applications for admission into the Free Zone regime. This single one-stop shop for investment approval replaces the previous twenty ministries, offices, and agencies involved in investment approval.[184] Although final authorization to establish an industrial free zone must come from the minister in charge of industrial development, such approval must be forthcoming within thirty days following the date shown on the receipt certifying that a complete application was submitted to the minister by the NOIFZ. If a ministerial decision is not rendered within thirty days, the application is deemed approved. This provision reduces the time required for Free Zone investment approval from between six to eighteen months to just one month. In addition, article 10's single application form replaces the twenty-four independent steps previously required.

Could not these streamlined administrative procedures in the Free Zone regime have found their way into the 1990 Code? The old Code suffered from the problem of excessive centralization, which was further compounded by a bureaucratic culture characterized by a laissez faire work ethic. The arrogance, corruption, laxity, indolence, and indifference of Cameroon's bureaucracy are legendary and have been lamented by many observers in Cameroon and abroad.[185] In this respect, much work still must be done to change the Cameroon bureaucratic culture if the goal is to restore foreign investor confidence in the economy.

Since the benefits of foreign investment inure not only to the private investor, but to the host country as well, it is in their mutual interests that the investment process operates effectively. Government functionaries in capital- and technology-starved countries like Cameroon need to understand that investor cooperation is a necessary ingredient for a successful investment program. A mechanism that involves both the public and private sectors in all stages of the investment process is perhaps the best way to institutionalize the bipartisan interests involved in an investment project. The trail-blazing Free Zone regime clearly recognizes this condominium of interests by providing for a board of directors of NOIFZ composed of representatives from both the public and private sectors.[186] A comparable structure is required for the investment code, one that is indepen-

183. The Free Zone Regime is one of the five investment regimes mentioned in art. 31 of the 1990 Code.

184. *See* USAID Publication, *supra* note 104, at 69.

185. *See* P.-J. TEDGA, *supra* note 112, at 166–67; *see also L'Aministration Camerounaise en Question: Une Interview Exclusive du Professeur Roger Gabriel Nlep,* Le Messager, 31 July 1990, at 8–9; USAID Publication, *supra* note 104, at 68.

186. Free Zone Regime, *supra* note 5, art. 4(a)(1).

dent of the authoritarian government.[187] Such a body will not operate as a policy-setting authority, but more as a monitoring agency, i.e., ombudsman for foreign investments. It will monitor the conduct of public servants who screen and approve investment applications to ensure that unnecessary delays are reduced to a minimum.

7. *Deconcentration of Industries*

The 1984 Code articulated an industrial decentralization policy with appropriate incentives to encourage the location of enterprises away from the congested urban centers of Douala and Yaounde.[188] Location of enterprises in economically underdeveloped areas was made a condition for admission into the Special Undertakings[189] and Small and Medium Undertakings Schedules,[190] and the 1990 Code continues this policy, but with few incentives. One can therefore expect the past trend of businesses locating in and around Douala and Yaounde will continue.

8. *Environmental Protection*

A stated objective of the 1990 Code is to encourage the creation and development of economic activities geared towards the protection of the environment. Astonishingly, the Code neither outlines the standards by which to evaluate compliance with environmental laws nor provides any incentives to investors who comply with environmental protection regulations or disincentives for those who flout these laws. This is a glaring drafting oversight.

IV. Conclusion

In revising the investment code the Cameroon Government has demonstrated a willingness to rethink its entire approach toward attracting and regulating foreign investments. The result is an investment law that holds out great promise in meeting its stated objectives. Its strengths are many. The 1990 Code treats foreign and domestic investors similarly since its focus is on investments instead of the source of these investments. Unlike the investment regimes of some other countries, Cameroon's recently revised Code does not offer limitless, outrageous, or unnecessary inducements.[191] Benefits for investments admitted under the Code are phased in to correspond with the various stages through which an

187. The old National Investments Commission could have been restructured along the lines of NOIFZ's Board of Directors.

188. 1984 Code, *supra* note 19, § 5(3)-(4).

189. Art. 22 of the 1984 Code provided that admission into Schedule A would be conditioned on a willingness to locate in border regions or in areas where access and supply conditions are particularly difficult. *Id.* § 22.

190. Enterprises approved under the SME Schedule shall be those that "establish outside areas with a high industrial concentration." *See id.* § 28.

191. *See* Maktouf, *supra* note 99, at 916.

enterprise passes. The Code provides greater transparency in the rules and regulations governing investments and makes a determined effort to retreat from the excessive government bureaucracy in the approval of investments that epitomized the old Code. As a result, administrative procedures have been simplified through the one-stop shop. To reassure foreign investors that their investments are safe, the new Code contains greater guarantees and protection against expropriation and nationalization while offering compensation conforming to international standards. For the first time in the history of investment code drafting in Cameroon, adequate procedures for the resolution of investment disputes have been included in an investment regime.

There is no doubt that for a very long time this Code will serve as the focal point for private capital flows to the country. In all probability Cameroon will continue to rely on foreigners' savings to finance its need for the capital investment necessary to underwrite its economic growth for the foreseeable future. Nevertheless, the conditions that impeded FDI flows in the past will not vanish simply because the new investment Code has been liberalized. Since the Code is shaped in the larger political and economic context, its success in attracting scarce FDI will depend to a large degree on whether broader macroeconomic and regulatory reforms are instituted to improve the overall environment for FDI and stimulate productive investment in general.